

405 KAR 20:050. Mountaintop removal.

RELATES TO: KRS 350.010, 350.028, 350.133, 350.405, 350.450, 350.465

STATUTORY AUTHORITY: KRS 350.028, 350.133, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards for surface coal mining operations, including the mountaintop removal method. This administrative regulation sets forth special performance standards and variance procedures for conducting mountaintop removal.

Section 1. Performance Standards. Surface coal mining activities may be conducted under a variance from the requirement of 405 KAR Chapters 16 through 20 for restoring affected areas to their approximate original contour, if:

- (1) The cabinet grants the variance under a permit, in accordance with 405 KAR 8:050;
- (2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;
- (3) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;
- (4) The alternative land-use requirements of 405 KAR 16:210 are met;
- (5) All applicable requirements of 405 KAR Chapters 7 through 24, other than the requirement to restore affected areas to their approximate original contour, are met;
- (6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the cabinet may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:
 - (a) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or
 - (b) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;
- (7) The final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed 1v:2h except where engineering data substantiates, and the cabinet finds, in writing, and includes in the permit under 405 KAR 8:050, that a minimum static safety factor of one and five-tenths (1.5) will be attained;
- (8) The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill;
- (9) Natural watercourses below the lowest coal seam mined are not damaged;
- (10) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with nontoxic spoil to prevent pollution and achieve the approved post-mining land use; and
- (11) Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under subsections (3) and (4) of this section. All excess spoil material not retained on the mountaintop shall be placed in accordance with 405 KAR 16:130. (8 Ky.R. 1591; eff. 1-6-1983; Crt eff. 7-3-2018.)